

Internal Revenue Service

Department of the Treasury

District  
Director

P.O. Box 2508  
Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:

Date: DEC 15 1989

NO RESPONSE RECEIVED TO  
DENIAL LETTER CASE  
CLOSED BY REVIEW 118-90

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure 1.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

11/17/89  
130/34

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

/s/  
by:

[REDACTED]  
District Director

Enclosures: 3

cc: [REDACTED]

ENCLOSURE

A review of your application and subsequent correspondence indicates that you were incorporated in the State of [REDACTED] on [REDACTED]. Your Articles of Incorporation state that the purposes of your corporation are to construct, maintain and operate superior golf facilities for the use and enjoyment of the general public at a reasonable user's fee with the entire net profits derived therefrom to be used for educational and charitable purposes.

Article III of the Articles of Incorporation states that the corporation will be in existence for one hundred years.

Article V states that the resident agent of the foundation will be [REDACTED].

[REDACTED], a retired professional golfer, is the president of this corporation. [REDACTED] and [REDACTED] are also directors of [REDACTED]. The Articles of Incorporation state that the directors may be re-elected to succeed themselves without limitation.

Article XII of the Articles of Incorporation states that this corporation shall have and enjoy the powers enumerated and set forth in Section 4 of the Act entitled "An Act concerning the organization of foundation or holding companies which prescribe their powers and duties", and as set forth in "The [REDACTED] General Not-for-Profit Corporation Act".

The application states that it provides a golfing facility for the use of the general public. This would lead to lessening the burden of the local government and the net proceeds would be used for educational scholarships for young golfers and young people working for the facility.

[REDACTED] and [REDACTED] entered into a lease agreement with the Board of Commissioners of the County of [REDACTED].

A large portion of about [REDACTED] acres of land located in [REDACTED] County is leased to [REDACTED] to construct, operate and maintain [REDACTED] holes of golf and [REDACTED] practice greens. The lease agreement authorizes that all fees shall be comparable to those charged by private golf courses open to the general public in the area but may not at any time be more than [REDACTED] percent greater than those presently charged by the municipal golf courses in [REDACTED].

The remaining land is leased to [REDACTED] for the

purpose of constructing a modern golf clubhouse, practice range and adequate parking facilities. The lease further states that the clubhouse will contain space for a professional golf shop, with equipment, merchandise and services offered in connection therewith. [REDACTED] will have exclusive rights and privilege of conducting and operating a restaurant and bar in the golf clubhouse. [REDACTED] also has the right to rent his golf carts to the golfers of [REDACTED].

The term of the lease is for [REDACTED] years. The lessees have the right to renew the lease for [REDACTED] successive [REDACTED]-year periods.

On [REDACTED], the directors of the foundation passed a resolution allowing it to borrow \$[REDACTED] from [REDACTED] for a term of [REDACTED] years with an annual interest rate at [REDACTED] percent to finance the construction of a public golf course. It further authorized [REDACTED] to execute any and all paper and document for and on behalf of the corporation in order to effect said loan and borrowing.

[REDACTED] financed the golf course by entering into [REDACTED] loans with [REDACTED] and [REDACTED]. There was no written agreement between the foundation and [REDACTED] regarding to the latter loan.

The sole income of [REDACTED] is from green fees which are charged at the same rates as the municipal golf courses. The past financial data from [REDACTED] through [REDACTED] showed that only [REDACTED] percent or less of the foundation's income was used for the scholarship program. The proposed budgets of [REDACTED] through [REDACTED] show that [REDACTED] is expected to give only [REDACTED] percent of its total income to the scholarship program. The organization operates a golf course with the estimated income of \$[REDACTED] in [REDACTED] and only plans to give \$[REDACTED] to charity. Most of income was used and is expected to be used for employees' salaries and maintenance.

[REDACTED], director, supervises collecting green fees and scheduling golfers and [REDACTED] supervises maintenance of the golf course and equipment. Each receives \$[REDACTED] per year from the foundation for their services.

The application further clarifies that the caddies are no longer given priority because of their relationship to the sport of golf. The directors decided to donate the scholarship funds directly to [REDACTED].

Form 1023, Application for Recognition of Exemption under section 501(c)(3) of the Internal Revenue Code, was previously submitted by the corporation on [REDACTED]. The District Director denied this request for exemption in a letter dated [REDACTED]. This position was sustained upon appeal by the Regional Director of Appeals.

The corporation claims that the current activities differ from its past activities because its debts were reduced and facilities were expanded. These changes were made at various times during the last [REDACTED] years.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Section 502(a) of the Internal Revenue Code states that an organization which operates for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under section 501 of the Internal Revenue Code.

Section 513(a) states that an organization is subject to tax imposed by section 511, on any trade or business the conduct of which is not substantially related to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

Revenue Ruling 67-5, C.B. 1967-1, 123 describes a foundation controlled by the creator's family which is operated to enable the creator and his family to engage in financial activities which are beneficial to them, but detrimental to the foundation. The foundation is operating for a substantial non-exempt purpose and serves the private interests of the creator and his family, and therefore is not entitled to exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

Revenue Ruling 74-298, C.B. 1974-1, 133 states that a nonprofit organization whose sole activity is sponsoring an annual professional golf tournament for which it leases a golf course and charges admission, is not operated primarily for an exempt purpose. A professional golf tournament is an activity that can be operated for profit, and the sponsorship of such a golf tournament can itself be a business for profit. The golf tournament sponsored by the organization is carried on with the general public and is operated in a manner similar to tournaments operated for profit.

Revenue Ruling 66-225, C.B. 1966-2, 227 states that an organization formed by the owner of a regular, for-profit business is not entitled to exemption when the organization is used as a part of the private business.

\_\_\_\_\_ was organized and is operated by \_\_\_\_\_, who also operates a private business adjacent to the foundation's golf course. As described in the lease agreement, he has exclusive right to operate his pro-shop, bar, restaurant, parking facilities and golf cart rental. Since the foundation has no such facilities of its own, the users of the foundation automatically become patrons to \_\_\_\_\_'s adjacent businesses. The golfers who wish to rent golf carts will have to rent them from \_\_\_\_\_.

The operation of the foundation's golf course and operation of \_\_\_\_\_'s adjacent business become parts of the same business. Thus the results of one will help the other successfully in business.

This corporation was financed through private loans such as loans from Small Business Administration and \_\_\_\_\_. This is an unusual approach for developing the public recreational facilities. They are usually financed through government support and/or the general public. It is naturally understood that \_\_\_\_\_ has an economic interest in the golf course. The golf course is strongly controlled by him to protect his economic interest in the foundation through the loan. Because the foundation and his private business work hand in hand, if the golf course succeeds so does his pro-shop, bar and restaurant. The golf course operated by \_\_\_\_\_

Furthermore, section 502 of the Internal Revenue Code states that an organization shall not qualify for exemption under section 501 on the ground that it uses all of its net income for charitable purposes if its primary purpose is to conduct a trade or business for profit.

Therefore, [REDACTED]  
does not meet the requirements set forth in section 501(c)(3) of the  
Internal Revenue Code.

This is a denial letter.